

Commodity Futures Archive - Selected materials, CFTC Interpretative Letter No. 76-5 (Registration Requirements Regarding Commodity Training Advisors), ¶20,147, Commodity Futures Trading Commission, (Apr. 12, 1976)

¶20,147. Commodity Futures Trading Commission, Office of General Counsel. (Released April 12, 1976). Correspondence in full text.

Registration: Commodity Trading Advisors: Foreign and Domestic Commercial Customers: Exemptions: Customers Dealing Only in Spot and Forward Contracting Markets.— A metals dealer whose customers include only foreign and domestic commercial users may furnish foreign cash market information and recommendations to its domestic customers and domestic futures price information and recommendations to its foreign customers without registration as a commodity trading advisor, so long as the furnishing of such information is solely incidental to its business and those customers' transactions are only in the spot and forward contracting markets.

See ¶4375, "Definitions" division; and ¶7625, "Registration" division.

Definitions: Commodity Trading Advisors: Exclusion from Definition: Cash Market Analyses: Intention to Predict Futures Prices May Be Inferred.— Analyses of cash market price movements on foreign or domestic markets may be intended to forecast or predict prices of commodities for future delivery on a contract market and as such may remove the analyst from the exclusion from the definition of commodity trading advisor provided in the proposed Reg. §1.54(a) of the CFTC for cash market information.

See ¶4375, "Definitions" division; and ¶7625, "Registration" division.

Registration: Commodity Trading Advisors: Foreign Customers Only: Jurisdiction of CFTC Based on Instrumentalities of Interstate Commerce.— According to the Office of General Counsel, a commodity trading advisor who supplies trading information and recommendations to only foreign customers through the jurisdictional instrumentalities of interstate commerce, is not exempt from registration as a commodity trading advisor.

See ¶7625, "Registration" division.

Re: Sections 2(a) (1) and 4m of the Commodity Exchange Act; Proposed Section 1.54(a) of the Regulations; Registration Requirements Regarding Commodity Trading Advisors

Dear

Reference is made to your letters to the Commission dated August 6 and November 17, 1975, requesting that the Commission's staff not recommend that any enforcement action be taken if your client engages in certain activities without registration as a commodity trading advisor under the Commodity Exchange Act, as amended ("Act").

From your letters and from the conversations between you and a representative of your firm and the Commission's staff, we understand the facts to be as follows: Your client is a dealer in gold and silver bullion and other metals, whose customers include manufacturers, other large consumers, institutions and other dealers. Your client does not do business with the public generally and does not accept orders for futures contracts. Your client's transactions with its customers are either "spot" contracts or "forward" contracts for the physical metal. Your client's customers call upon it for their bullion or metal requirements and, through forward contracts, for their hedging needs.

Incidental to its business, your client furnishes the services described below to certain of its customers for which it receives no compensation or other remuneration. As a service to its customers located outside the United States, all of whom are professional metal traders and users ("Foreign Customers"), your client distributes historical, statistical information regarding the price of commodities for future delivery on United States contract markets ("Futures Statistics"), as well as comments which might be viewed as intended to encourage or discourage trading in commodities for future delivery on contract markets or to forecast or predict the price of such commodities ("Futures Substantive Comments"). As a service to certain of its customers located in the United States, your client distributes a chart setting forth the spot and forward bullion prices at the "fixings" in the London Silver Market and other cash markets located outside the United States, throughout the previous month ("Physical Commodity Statistics"), as well as substantive comments upon bullion cash price movements in such markets ("Physical Commodity Substantive Comments"). The Physical Commodity Substantive Comments include analyses, comments, recommendations, and, at times, predictions, with respect to the movement of bullion prices in foreign cash markets only, and do not include data with respect to the movement of prices in foreign futures markets, such as the London Metal Exchange. Your client furnishes the above services solely to its customers.

Based upon the facts set forth above, particularly the fact that your client renders the services described above solely to, and in the course of its spot and forward transactions with, its customers, this Office will not recommend any enforcement action to the Commission, based solely on your client's failure to register with the Commission as a commodity trading advisor, if your client distributes Futures Statistics and Futures Substantive Comments to its Foreign Customers, and Physical Commodity Substantive Comments to its United States customers. Because this position is based upon the facts and representations contained in your letters and which you furnished to this Office, it should be noted that any different, omitted or changed facts or conditions might require a different conclusion.

There are, however, certain issues raised in your letter which we believe require comment. As pointed out in your letter of August 6, 1975, the Commission has published for comment proposed section 1.54(a) of the regulations, which would exclude a person from the definition of a commodity trading advisor contained in section 2(a)(1) of the Act if certain, specified conditions are met. Two of these conditions, set forth in paragraph (3) of proposed section 1.54(a), require that the services rendered by such person not be intended, directly or indirectly, to forecast or predict the price of any commodity for future delivery on any contract market, and do not contain any advice or suggestion which, in light of the circumstances in which such services are rendered, is intended to, or can be expected to encourage or discourage trading in any commodity for future delivery on any contract market. *See*, 40 Fed. Reg. 29090 (July 10, 1975). We believe that, in certain circumstances, the furnishing of analyses, comments, recommendations or predictions with respect to the cash market, whether foreign or domestic, might well be intended to forecast or predict the price of a commodity for future delivery on a contract market or could contain advice or a suggestion which is intended or which can be expected to encourage or discourage futures trading in a commodity on a contract market. Accordingly, this Office does not believe that the rendering of such services, although limited to cash commodity price movements on foreign markets, will necessarily meet the conditions of proposed section 1.54(a) (3) of the regulations.

In your letter of August 6, 1975, you assert that neither "the Act nor its legislative history suggest that Congress intended the commodity trading advisor registration requirement to cover advice given solely to Foreign Customers" and that the "Commission should have no interest in the extension of its jurisdiction to Foreign Customers". We wish to point out that section 4m of the Act requires any commodity trading advisor who makes use of the mails or any instrumentality of interstate commerce in connection with its business as a trading advisor to register with the Commission, unless exempted from registration as provided in that section. The language of section 4m and the absence of any contrary indication in the legislative history suggest that the commodity trading advisor registration requirements apply to any person who uses the jurisdictional means to render the advice described in section 2(a)(1) of the Act. Thus, the person over whom the Commission would be exercising its jurisdiction would be the person who uses the jurisdictional means to render advice, rather than the clients of such person. Accordingly, this Office is unable to agree with the general proposition that a commodity trading advisor who uses the requisite jurisdictional means to render trading advice solely to foreign persons is thereby exempt from the registration requirements of the Act regarding commodity trading advisors.